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# *CONSUMER MORTGAGE COALITION*

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January 13, 2006

Ms. Kelli Farmer  
Consumer and Governmental Affairs Bureau, Policy Division  
Federal Communications Commission  
445 12th Street, SW  
Room 5-A866  
Washington, DC 20554

Re: Petition for Declaratory Ruling Filed by the Fax Ban Coalition Concerning the  
Commission's Jurisdiction over Interstate Communications under the Telephone  
Consumer Protection Act of 1991  
CG Docket No. 02-278, 70 Fed. Reg. 74014 (Dec. 14, 2005)

Dear Ms. Farmer:

The Consumer Mortgage Coalition (the "CMC"), a trade association of national residential mortgage lenders and servicers, appreciates the opportunity to submit these comments in support of the Fax Ban Coalition's petition (the "Petition") for the Commission to issue a declaratory ruling preempting laws such as California Business and Professions Code § 17538.43 that purport to regulate interstate facsimile transmissions. The CMC is a member of the Fax Ban Coalition and signed the Petition.

The residential mortgage industry relies heavily on facsimile transmissions of information as one of the most important means for lenders to communicate with mortgage brokers about pricing of mortgages. Consumers today obtain mortgage loans both by dealing directly with the mortgage lender through the "retail" channel, and increasingly by dealing with an intermediary such as a mortgage broker through the "wholesale" channel. The wholesale channel depends on the use of facsimile transmissions to communicate the lender's current rates to the broker. Lenders transmit "rate sheets" to brokers that update these rates at least once per day. Communicating this information via facsimile allows the broker to shop for the best loan among the various alternatives available, benefiting borrowers as well as brokers and lenders. Brokers sometimes respond by submitting applications or other material to lenders with which they have an established business relationship via fax, without specifically obtaining permission to send the particular transmission. As the mortgage business has become increasingly nationwide in scope, it is increasingly the case that lenders and brokers, as well as other participants in the process such as consumers and correspondent lenders, are located in different states.

Because of the importance of faxes to our business and to our customers, the CMC has strongly supported the Commission's regulations under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. These rules have long permitted an "established business relationship" ("EBR") exception to the general prohibition in the TCPA against sending unsolicited facsimiles. CMC also strongly supported the Junk Fax Prevention Act of 2005 ("JFPA"), which codified the Commission's regulatory position into the statute. Unfortunately, however, California and other states have enacted laws in which they seek to regulate not only commercial faxes sent within their states but also faxes sent between their states and other states. For example, the California statute purports to specifically abrogate the EBR exception, even for interstate faxes sent to or from California, even though Congress enacted and the President signed into law in July 2005 legislation that affirmatively permits what California purports to prohibit.

As the Fax Ban Coalition has stated, this overreaching by California and other states is misguided and does not benefit consumers. It is clearly inconsistent with Congressional intent and the Commission's goals in implementing the TCPA. As a legal matter, it impermissibly burdens interstate commerce involving CMC members and other mortgage lenders and brokers.

It is critical to the efficient operation of the residential mortgage business that there be a single uniform body of law and regulations relating to facsimile transmissions. CMC strongly supports the arguments of the Fax Ban Coalition that the TCPA and the JFPA, as well as the Commerce Clause of the United States Constitution, prohibit states such as California from attempting to regulate interstate facsimile communications. Specifically, we believe that the Commission should change its approach to the preemption issue and, as stated in the Petition, adopt a general rule "affirming that the Commission has exclusive jurisdiction over interstate fax communications, as it has over all other interstate communications, and by preempting all State laws that purport to regulate in that area." At a minimum, the Commission should grant the state-by-state petitions that are pending in the current proceeding.

Permitting individual states such as California to impose rules and restrictions on interstate facsimile transmissions would disrupt the flow of information and create substantial and costly inefficiencies in the mortgage lending industry. Lenders, brokers, and other participants would have to dedicate a substantial amount of time, resources, and expenses to evaluate and attempt to comply with a plethora of state laws that impose confusing and contradictory obligations on them. For example, if California were allowed to abrogate the EBR exception, then the TCPA's goal of ensuring uniformity in the treatment of interstate communications would be significantly undermined. Lenders that are based outside of California would have two options: adopt separate procedures for dealing with California brokers, or stop doing business in California. Lenders that are based in California would be competitively disadvantaged in their dealings with out-of-state brokers. This result is completely contradictory to the goals of the TCPA, and indeed, to those of the Commerce Clause of the Constitution. Similar negative results would occur if other states were also permitted to regulate interstate fax communications.

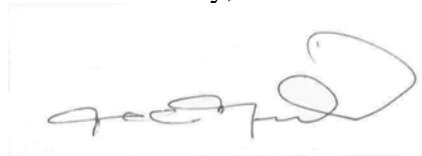
In codifying the EBR exception to the requirement to obtain prior consent to fax in the JFPA, the Congress made an affirmative decision to permit the free flow of information among businesses such as mortgage lenders and mortgage brokers. Uniform rules for interstate fax transmissions benefit our industry and also help consumers by increasing their access to the best mortgage rates and terms.

The CMC agrees with the legal arguments for a broad preemption ruling by the Commission advanced in the Fax Ban Coalition's petition. We urge the Commission to grant the declaratory relief sought by the Fax Ban Coalition's petition.

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We appreciate the opportunity to present our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne C. Canfield", enclosed within a rectangular box.

Anne C. Canfield  
Executive Director